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March 22, 2002

VIA E-MAIL

Mr. Samuel McClerren
Telecommunications Division
Illinois Commerce Commission
527 E. Capitol Avenue
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Springfield, IL 62794-9280

Re: Docket No. 01-0539 - Part 731 Rule (Staff's Draft Version #2(a))

Dear Sam:

While most of the time during the last workshop was taken up with a discussion related to the Level 2 requirements contained in version #2(a) of the Staff's draft Rule, as you know, I did have a brief opportunity to express my concerns about the changes that had been made and the provisions applicable to Level 3 carriers. While I am still uncertain as to the reasoning behind the changes from version #2 to #2(a), on behalf of the IITA, I believe the language contained in Subpart F should return to and be more closely aligned with the language contained in version #2. I am attaching language that I believe to be appropriate for "Subpart F: Provisions Applicable To Level 3 Carriers".

While perhaps the only issue upon which there has been a consensus, I believe all of the parties to the workshop process have been in agreement that it is appropriate for small companies with the "rural exemption" to be exempt from the requirements of the Rule until such time as the Commission in a "rural exemption termination proceeding", conducted pursuant to Section 251(f) of the Telecommunications Act, terminated the exemption and determined what, if any, of the Level 2 requirements should be imposed on a company. The revisions contained in version #2(a) are inconsistent with that understanding, since they would make all Level 2 requirements

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applicable to the small incumbent local exchange carrier on the date a Commission's Order is entered. It is entirely appropriate and, in my view, necessary for the Commission, in a fact-specific proceeding where a CLEC is making specific requests of a small ILEC, to determine, based upon the criteria contained in version #2 of the Staff's Rule (which I have reinserted into the attachment), which of the Level 2 requirements, if any, should be applicable to the company and when (taking into account the evidence in the rural exemption termination proceeding) those requirements should be applicable. I believe the attached language is not only consistent with the discussions that have occurred within the workshops but is consistent with the company-specific, facts-specific type of determinations that are contemplated by Sections 251(f)(1)(A) and (B) of the Telecommunications Act.

If the provisions, such as those we are recommending for Subpart G, are not incorporated within the proposed Rule, it will place the IITA and its member companies in a difficult, if not impossible, situation regarding the proposed Rule. The IITA and its Member Companies must then be highly concerned about the Level 2 requirements that would be imposed by the Rule. Worse yet, we will be forced to look at those requirements in a hypothetical "what if" situation not knowing what might be requested of any given individual company. The IITA's membership, while all small companies having a rural exemption, differ in size, in the type of plants and equipment they currently deploy, have different internal systems, operations and capabilities, and have varying numbers of employees and personnel to deal with the potential requirements imposed on Level 2 carriers. We would have little choice other than to approach the rulemaking from a "worst case scenario" viewpoint, since we would not know at this point in time what would be requested of any given company, on one hand, and any given company's capability to meet the requirements, on the other hand.

In my opinion, the Subpart G language being submitted by the IITA would allow those concerns to be largely set aside at this point in time. The Subpart G language would allow for a process where the Commission would make determinations based upon specific requests from a CLEC, taking into account the individual company's factual circumstances and capabilities as they exist at that point in time.

The IITA would request that the attached Subpart G language be incorporated into the Staff's proposed Rule.

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If you have any questions or would like to discuss anything, please give me a call.

Very truly yours,

Dennis K. Muncy

DKM:pam

Attach.

SUBPART G: PROVISIONS APPLICABLE TO LEVEL 3 CARRIERS

Section 731.700 Exemption From Certain Subparts

Subparts B, C, D, E and F of this Part shall not apply to LECs with a Rural Exemption pursuant to Section 251(f) of the Telecommunications Act. If the Commission terminates a LEC's Rural Exemption pursuant to the provisions of 251(f) of the Telecommunications Act, the Commission shall determine which, if any, provisions of Subpart F shall apply to the LEC and the time period for compliance pursuant to Section 731.705 of this Part.

Section 731.705 Conversion to Level 2

A carrier whose Rural Exemption is terminated by a Commission order pursuant to Section 251(f) of the Telecommunications Act may be required to comply with some or all of the Level 2 requirements established in Subpart F of this Part only after the Commission considers and rules upon the following items:

- a) The technical feasibility of compliance with each Subpart F requirement;
- b) The economic feasibility of compliance with each Subpart F requirement;
- c) The expected demand for wholesale services covered under Subpart F;
- d) Whether the benefits accrued to competing carriers justify the costs incurred by carrier necessary to comply each Subpart F requirement;
- e) With which Subpart F requirements that carrier must comply and by what time period; and
- f) Whether carrier needs to comply with Subpart F if carrier enters into an agreement with a competing carrier whereby the competing carrier agrees to accept different wholesale service quality standards than those contained in Subpart F.